

SPECIAL COUNCIL MEETING

JANUARY 22, 2014

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Vice Chair Mason K. Chock, Sr., at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, January 22, 2014 at 8:36 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Mason K. Chock, Sr.
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura

Recused: Honorable Jay Furfaro

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Mr. Bynum, and carried by a vote of 6:0:1 (Council Chair Furfaro was recused).

Vice Chair Chock: Would you like to read the public comment for us?

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Vice Chair Chock: Is there anyone from the public that would like to give comments at this period?

There being no one present to provide public comment, the meeting proceeded as follows:

RICKY WATANABE, County Clerk: Vice Chair, we are on Executive Session (E). Is the County Attorney here? Perhaps you would like to read item ES-695.

There being no objections, the rules were suspended.

STEPHEN F. HALL, Deputy County Attorney: Good morning.
Stephen Hall on behalf of the County Attorney's Office.

EXECUTIVE SESSION:

ES-695 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council, to allow Counsel the opportunity to provide the Council with a briefing regarding Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-1-0340 (Fifth Circuit Court), obtain settlement authority and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objections, the meeting was called back to order, and proceeded as follows:

Vice Chair Chock: Thank you, Mr. Hall. I believe we have...

Mr. Watanabe: Vice Chair, we have three (3) people signed up to speak on this item.

There being no objections, the rules were suspended to take public testimony.

Vice Chair Chock: Can we have the first speak, please?

Mr. Watanabe: We have Glenn Mickens.

GLENN MICKENS: Thank you, Vice Chair. Thank you, BC. For the record, Glenn Mickens. Some of you know that I have testified for many, many years on many subjects. I know you do not agreed with a lot of what I say. I just hope you pay attention to what I have to say on this thing. I hope you read it very carefully. You have a copy of it. I appreciate it. Thank you. This is the twenty-second (22nd) Executive Session the Council has held relating to efforts to terminate and/or discipline our County Auditor and the fruits of those efforts. When an honest, dedicated County employee does his job with excellence and his work discloses irregularities and possible criminal acts, it is reprehensible for those involved in the wrongdoing to become engaged in retaliatory methods to avenge their misdeeds. The abundance of time that the Council has devoted to the efforts to sanction Mr. Pasion in secret proceedings lends compelling support to the presence of a County governmental conspiracy to prevent or critically limit his continued investigation of County affairs. This is a disservice to the people of our County and a frustration of the purpose intended by the creation of the County Auditor function, as you well know. The public has been foreclosed by the Council's use of the secret proceedings to know of the matters that have been discussed, but the improper presence of an Administrative Rule is highly suspect. It is not the function of the Council to save Administrative Offices from the consequences of their failures. Your harassment of the Auditor has now resulted in his initiation of a lawsuit, and I might add, a lawsuit that is going to cost hundreds of thousands, if not more in the lawsuit. We trust that you will be faithful to your duties as to your endeavor to bring closure to a situation that should not have risen. Thank you.

Vice Chair Chock: Thank you, Mr. Mickens. Any questions here before we move to the next speaker?

Mr. Watanabe: Next speaker is Alice Parker, followed by Ken Taylor.

ALICE PARKER: Good morning Councilmembers, BC, and all. My names is Alice Parker. I want to say that being an Auditor is not a popular position as I know from experience being an Auditor for the government. We had a case when I was working with a very friendly, outgoing, and nice personality person who would come in and glad hand everybody. I was curious about some of the documents that he presented and pursued it. It turns out that the Church that he was claiming deductions for, did not know the taxpayer was never issued the receipt and I warned my fellow Auditors to watch out for this person, but he was so personable they just said, "Oh, no. We do not care." I went to the Manager and he said, "do not worry." There was one person in particular who had a case coming up with this person and I said, "Watch it." I said, "His documents are false." But this fellow Auditor was known as "never on Monday and seldom on Fridays" because he was an alcoholic. So, he did not want to be bothered. Unlike Mr. Pasion who was honest and dedicated and he wants things done right. So, we need him. Thank you.

Vice Chair Chock: Thank you, Alice. Any questions Councilmembers? If not, next speaker please.

Mr. Watanabe: Next speaker is Ken Taylor, followed by Lonnie Sykos.

KEN TAYLOR: Good morning Chair and Council. I have not seen you this year. I do not know where you have been hiding, but I am glad to see you all here. As you have seen the testimony I turned in was a letter to the Mayor from Glenn and I raising some concerns. You wonder maybe how that ties into what the item on your agenda is, but this letter was put together based on comments in the original complaint that was filed by the Auditor against the County and Jay. On pages 7-9, where it raises the issues that we address in the letter, we believe strongly that Hawai'i Revised Statutes (HRS) 78-9 spells it out very clearly that it is time for somebody to step down. I would say that at this point in getting information together on this, we strongly believe that there may be three (3) or four (4) other County people that we will be writing a similar letter for asking for them to resign or have you people follow through on enforcing the Hawai'i Revised Statutes since you took your Oath of Office, in which you swore to uphold the State Constitution. We believe strongly that this is the time to show your leadership in following through on what you have sworn to uphold. Hopefully, as time goes along, you will see fit to exercise your powers. Thank you.

Vice Chair Chock: Thank you, Ken.

Mr. Watanabe: The last speaker is Lonnie Sykos.

LONNIE SYKOS: Good morning Council Vice Chair, Chair at this moment I guess, and Councilmembers. For the record, my name is Lonnie Sykos. I am here once again to voice my support for the Auditor's Office and the actions that the Auditor's Office has taken these last couple of years. I normally and loathed to fund Human Resources lawsuits. There is nothing that the County does that is a bigger waste of money than our failure to reform Human Resources and thus the endless stream of Human Resource related lawsuits that we face. However, in the matter of the Auditor, because it not only touches on Human Resource problems, but because it directly impacts the Civil Rights of the public, I think that we need to go to trial. I think that it is absolutely ridiculous that the Council would hold twenty plus (20+) Executive Sessions and that the County Attorney would issue all of the opinions that he has in that having taken the

sanctions against the public's Auditor, that the County would not be willing to go to trial to defend its actions and its positions. In particular, we want to see at a public trial, the County's defense and justification for the twenty plus (20+) Executive Sessions and more importantly, we want the court to deal with the fact that our County Attorney issues opinions that apparently violate State law and the County Charter. Of the issues we want resolved in court, is whether or not the County Attorney is able to interpret our Charter and create powers and authorities that are not enumerated. The Charter itself says that he cannot, but what the public is questioning is the legal authority to supervise and punish the Auditor. The County Attorney through the public discussion, has presented his theory as to why the Auditor and the Police Chief as well because they are both term appointed employees, why someone in the County has to be able to discipline them and exercise authority. My position is that it violated my Civil Rights. The Auditor has to be independent just as the Police Chief, has to be independent of political influence. So, this is a great matter. It can very well leave small court, go to big court, get appeal, and end up in Federal court. These are our Civil Rights that are involved in the issues with the Auditor and thus we want the County to proceed immediately to trial. Thank you.

Vice Chair Chock:

Thank you, Lonnie. Councilmembers?

Mr. Hooser:
am sorry, thank you.

I have a question for the County Attorney. I

Vice Chair Chock:

Mr. Hall.

Mr. Hall:

Good morning.

Mr. Hooser:
testimony.

Good morning. I assume you heard the

Mr. Hall:

I did hear the testimony, yes.

Mr. Hooser:
which...

They refer to Hawai'i Revised Statutes 78-9

Mr. Hall:

Correct.

Mr. Hooser:
chance to research to see if in fact...

Can you comment on that or have you had a

Mr. Hall:

I have only...sorry to cut you off. Go ahead.

Mr. Hooser:
cannot refuse to attend the hearings or respond based on it might incriminate them.

It seems to say that officers of the County

Mr. Hall:

Correct.

Mr. Hooser:
not follow the law.

This testimony implies that the Mayor did

Mr. Hall:
that. However, I have not had a chance to look thoroughly into the statute that you are referencing. It was only brought to my attention yesterday. So, I think it would

I would agree that that testimony did imply

be ill-advised at this point to really discuss it in depth without getting more research and being able to give you a full answer.

Mr. Hooser: So you will be researching it and getting that information?

Mr. Hall: I would be happy to.

Mr. Hooser: Thank you. Thank you, Chair.

Mr. Hall: Any further questions?

Vice Chair Chock: Further questions? Councilmember Kagawa.

Mr. Kagawa: Thank you. It has kind of been a long process and we see these signs "Keep Mr. Pasion in position" and "We Need Ernie." Throughout all of these meetings we have never done anything to get Mr. Pasion out of his position. We never threw Ernie aside. So, Ernie has never been left. These signs are to me, paranoia or whatever about something that is coming from I guess somebody who think that they are listening into our meetings. I feel like they are wasting their time and yet, we cannot speak about it.

Mr. Hall: I understand what you are saying. Is there a particular question?

Mr. Kagawa: Yes. My question is when can we say why we are meeting? When can we say what were some of the concerns? It is all one-sided. It is all from Mr. Pasion's point of view.

Mr. Hall: Sure.

Mr. Kagawa: Oh, they are meeting because of this. I do not think he is accurate in saying all of his reasons why we are meeting. It is kind of frustrating that we are talking about a ghost.

Mr. Hall: Understandable. I think for purposes of this Executive Session we are discussing potential settlements and so those do need to be held in confidence.

Mr. Kagawa: Well, he is not doing that. Mr. Pasion is not acting in confidence. He is actually distorting the truth to me. If we can just simply say what the truth is on our end, I do not see why that is not fair.

Mr. Hall: I understand your position and I do not necessarily disagree with it.

Mr. Kagawa: Okay.

Mr. Hall: But again, just for purposes of this meeting in particular, we are only discussing civil matters, which by their very nature must be had in confidence.

Mr. Kagawa: I appreciate your answer. I am just trying to make a point too, because these are good people out there and they serve the public even from a voluntary standpoint. It is like it is kind of getting old.

Mr. Hall: Understandable. I apologize I cannot give you a better answer for that.

Mr. Kagawa: Thank you.

Mr. Hall: Thank you.

Vice Chair Chock: Councilmember Rapozo.

Mr. Rapozo: Thank you, Mr. Chair. First of all, I want to formalize Mr. Hooser's request with our staff that we send over a formal request for an attorney's opinion on the testimony that was submitted. Hawai'i Revised Statutes 78-8 references elected, appointed government employees. So, that I did find in my iPad, but I do not have the time to go look further. I think it does raise some questions. So, if we could get a formal opinion on the testimony, and if in fact it applies in this case because I would assume that there are some exceptions or exemptions in every law. I just do not know if they exist in this case. The other question is, and I am not expecting you to answer it today, because it would require some research with the Sunshine Law, Chapter 92, but I know Mr. Sykos talked about getting this to trial and the public has a right to know. I believe that once any matter is settled or resolved that the record becomes public.

Mr. Hall: That is correct.

Mr. Rapozo: So, the public would have an opportunity of the twenty plus (20+) meetings once the matter is resolved, whether through court or through settlement, that the public would have access to those minutes with some exemptions, some redaction. I think for the most part, they would be able to see the contents of the meeting.

Mr. Hall: That is correct. With specific regard to court records, as soon as anything is filed, that becomes public record and with regard to if we did end up going to trial in this matter, the court transcripts could also become public record as well.

Mr. Rapozo: Right. Thank you.

Mr. Hall: You are welcome.

Vice Chair Chock: Thank you. Any other questions?

Mr. Watanabe: Vice Chair. Before we have a motion to convene into Executive Session, for the record, we have received a memorandum from Council Chair Furfaro declaring a possible conflict of interest for this item and anything dealing with this item. For that reason, he recuses himself from discussing or participating in decision-making regarding this matter, just for the record, and it will come on the next Council Meeting agenda.

Vice Chair Chock: Thank you, Mr. Clerk, for clarifying that Council Chair Furfaro has recused himself. There is a request to move in Executive Session. I think we need five (5) votes. So sorry.

Mr. Bynum: May I have an opportunity?

Vice Chair Chock: Thank you, Mr. Hall.

Mr. Hall: Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: I too have listened to all of the public testimony and I just want some clarification of what the public record reflects. This was a personnel matter that came to the Council. The Council did not initiate it and it was our responsibility and we followed that responsibility. It is difficult to hear strong words like "governmental conspiracy" and not be able to respond. Those are powerful words that are being offered by people who have no clue of what has actually transpired here. The final thing is the privacy issue is Mr. Pasion's. If he wants public disclosure, then he can have that. He has chosen to keep, as it is normal, it is not a criticism, this personnel matter confidential. To draw conclusions that I see drawn here in my mind is not appropriate given that you do not have a fact based. I think I just want the public to know this is something that came to the Council and we have a responsibility to respond to it. It is not an action that they Council initiated. Thank you.

Vice Chair Chock: Thank you. I believe we have somebody who walked in who wants to speak. We certainly want to hear from Mr. Souza, Rosa. Sorry.

There being no objections, the rules were suspended to take public testimony.

JOE ROSA: Good morning members of the Council. For the record, Joe Rosa. Well, from my estimation it has been some twenty (20) odd sessions in Executive Session over a simple matter to deal with the County Auditor's Office. To me, it is sort of a record. It is not a record to be doing where everything is just dragging on and on. It is basically things to do with personalities. It is not a job orientated thing that Mr. Ernie Pasion did not do his job. He did an excellent job so people are looking for faults of him which I do not think because he was given a rating of excellent by the Auditor's Association. What is the problem that goes on that they want to get rid of the Auditor's Office? Is it because of those six (6) audits that they presented and made official by this Council? The only thing is that it has not been let out to the public to let the public know what is going on. Unfortunately, we had auditors here a couple weeks back. I noticed they said that what Mr. Pasion has done in his audits, they have not even corrected. That is a shame. Where is our leadership in this government? It is all the way from the Mayor down to the Council staff here who are not following through to see that those audits are corrected. If there is a wrong you correct it. Like the auditors came and they said there are still discrepancies in the audits. The gas card thing, that is one of those key items. Gasoline cannot evaporate for the amount of losses that they obtained during that time. Come on, let us be realistic. You do not have any grounds because like was mentioned by myself and Judge Laureta, you need just cause in a court of law not personalities, which is involved. I can notice and see

it because personalities were involved because of two (2) words, excel and excellent. It was personal. Come on, let us realize that it is not to deal with Mr. Pasion's job. The public voted for that Office, they crated that Office, he was nominated by the Council Chair, got a 7:0 vote, and now because of a little bit of discrepancies and the heat that he has exposed in those audits, people are getting scared of him.

Mr. Watanabe: Three (3) minutes.

Mr. Rosa: But he has done his work.

Vice Chair Chock: Thank you, Mr. Rosa. Three (3) minutes, right?

Mr. Rosa: Yes. He has done his work, but if there is no just cause, you people have no reason to continue this up here. He has done a job. Follow through with his audits and make it public so that we know what is going on. People have been asking me, "Why do they want to and why did they suspend him?" It is high time that something is done and come out to the public. If you people have no just cause, forget it. He has done an excellent job. I have read those audits. To me, it is some personalities that is going on. Thank you.

Vice Chair Chock: Thank you. Anyone else from that public that would like to speak on this item?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Vice Chair Chock: Can I have a motion to move into Executive Session?

Ms. Yukimura moved to convene in Executive Session for ES-695, seconded by Mr. Kagawa.

Vice Chair Chock: Can I have a roll call?

The motion to convene in Executive Session for ES-695 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser,	
	Kagawa, Rapozo, Yukimura	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Furfaro	TOTAL – 1.

Mr. Watanabe: Six (6) ayes.

Vice Chair Chock: Thank you. In five (5) minutes we will get back together.

There being no objections, the Council recessed at 9:02 a.m.

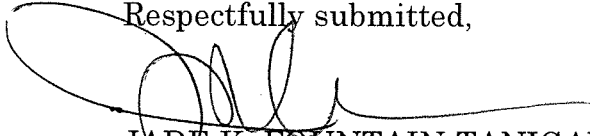
The Council reconvened at 10:21 a.m., and proceeded as follows:

Vice Chair Chock: We are back from Executive Session.

ADJOURNMENT.

There being no further business, the Special Council Meeting adjourned at 10:21 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jade K. Fountain-Tanigawa', written over a horizontal line.

JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

:aa